

ORIGINAL

FILED

MAY 25 2022

IN THE SUPREME COURT OF THE STATE OF NEVADA

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY [Signature]  
DEPUTY CLERK

MARC SCHACHTER  
Appellant,

vs.

STATE OF NEVADA  
Respondent.

Supreme Court No. 84547

District Court No. CR-14-1044

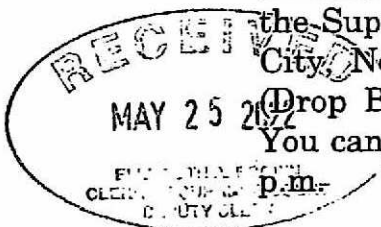
**APPELLANT'S INFORMAL BRIEF**

**INSTRUCTIONS:** If you are an appellant proceeding pro se (without an attorney) in the Nevada Supreme Court, you must file either (1) a brief that complies with Nevada Rule of Appellate Procedure (NRAP) 28(a), or (2) a completed copy of this informal brief form, see NRAP 28(k), with the Nevada Supreme Court on or before the due date, see NRAP 31. In civil appeals, if you do not file one of these documents by the due date, the Nevada Supreme Court may dismiss your appeal. In postconviction criminal appeals, if you do not file one of these documents by the due date, the Nevada Supreme Court or Nevada Court of Appeals may decide your appeal on the record without briefing.

**HOW TO FILL OUT THIS FORM:** This form must be typed, unless you are incarcerated, in which case it must be clearly handwritten. You do not need to refer to legal authority or the district court record. If you are completing your brief on this form, write only in the space allowed on the form. **Additional pages and attachments are not allowed.** If typing an informal brief, you may either use the lined paper contained in this form or an equivalent number of pages of your own paper. Your brief will be stricken if you fail to follow the directions in this form and the Nevada Rules of Appellate Procedure.

**WHERE TO FILE THE BRIEF:** You may file your brief in person or by mail.

**To file your brief in person:** Bring the brief to the Clerk's Office at the Supreme Court of Nevada, 201 South Carson Street, Carson City, Nevada, or at the Regional Justice Center Clerk's Office (Drop Box), 200 Lewis Street, 17th Floor, Las Vegas, Nevada. You can file your brief Monday through Friday, 8:00 a.m. to 4:00 p.m.



22-10644

To file your brief by mail: Mail the brief to the Clerk of the Supreme Court of Nevada, 201 South Carson Street, Carson City, Nevada 89701. **Your brief must be postmarked on or before the due date.**

You must file the original brief and 1 copy with the clerk of the Nevada Supreme Court. If you want the clerk to return a file-stamped copy of your brief, you must file the original form and 2 copies and include a self-addressed, stamped envelope. Documents cannot be faxed or emailed to the Supreme Court Clerk's Office.

Copies of the brief must be mailed or delivered to the other parties to this appeal or to the parties' attorneys, if they have attorneys. You must also include a proper certificate of service or complete the certificate that is attached to the informal brief form.

**CAUTION:** Pro se parties are prohibited from representing other parties. A pro se party may not complete a brief on behalf of other parties. Pro se parties may collaborate on their briefs, however, provided that if one brief is submitted on behalf of multiple pro se parties, each party must sign and date the brief to confirm that he or she has participated in the preparation of the brief and, by his or her signature, joins in the arguments and representations contained therein.



**Judgment or Order You Are Appealing.** List the judgment or order that you are appealing from and the date that the judgment or order was filed in the district court.

Filed Date	Name of Judgment or Order
3-28-22	DENIAL OF MOTION TO CORRECT/MODIFY ILLEGAL SENTENCE

**Notice of Appeal.** Give the date you filed your notice of appeal in the district court: APRIL 8, 2022

**Related Cases.** List all other court cases related to this case. Provide the case number, title of the case and name of the court where the case was filed.

Case No.	Case Title	Name of Court
CR-14-1044	STATE V. MARC SCHACHTER	2 <sup>ND</sup> JUDICIAL DIST.
167673	MARC SCHACHTER V. STATE	NV. SUPREME CT.
2:17-cv-01760	SCHACHTER V. GENTILI et al	NV. FEDERAL DIST. CT.

**Pro Bono Counsel.** Would you be interested in having pro bono counsel assigned to represent you in this appeal?

☒ Yes      ☐ No

**NOTE:** If the court determines that your case may be appropriate for having pro bono counsel assigned, an appropriate order will be entered. Assignment of pro bono counsel is not automatic.

**Statement of Facts.** Explain the facts of your case. (Your answer must be provided in the space allowed.)

FOLLOWING, A JURY TRIAL THAT LASTED FOUR DAYS,  
A JURY CONVICTED APPELLANT/DEFENDANT (SCHACHTER)  
OF ATTEMPTED ROBBERY (COUNT #1), AT A SENTENCING  
HEARING ON 2/20/15, THE DISTRICT COURT SENTENCED  
SCHACHTER TO 12 TO 48 MONTHS FOR THE ATTEMPTED  
ROBBERY. THE AMENDED INFORMATION ALSO INCLUDED AN  
ALLEGATION OF HABITUAL CRIMINALITY (COUNT #3)

THE COURT FOUND 2. PRIOR CONVICTIONS AND SENTENCED SCHACHTER TO A CONCURRENT 5 TO 20 YEAR SENTENCE FOR COUNT #3. THE COURT DELAYED ISSUING A WRITTEN JUDGEMENT UNTIL BOTH PARTIES COULD AGREE ON THE PROPER WORDING TO BE USED IN THE JUDGEMENT OF CONVICTION. ON 3/5/15, WITHOUT OBJECTION FROM EITHER PARTY, THE COURT FILED A JUDGEMENT OF CONVICTION. WITHIN WEEKS, THE DEFENDANT FILED A FAST-TRACK APPEAL ARGUING, INTER ALIA, THAT THE SEPARATE AND CONCURRENT SENTENCE, WAS IMPROPER. THE STATE AGREED. WITHOUT MOTION FROM EITHER PARTY, THE COURT ISSUED A "CORRECTED JUDGEMENT" ON 7/30/15. IT SENTENCED SCHACHTER TO 5 TO 20 YEARS FOR ATTEMPTED ROBBERY (COUNT #1) THIS COURT ISSUED AN ORDER OF AFFIRMANCE ON 8/10/16. THE ORDER CONTAINS A FOOTNOTE ACKNOWLEDGING THE "CORRECTED JUDGEMENT." ON 9/7/16 THIS COURT ISSUED ITS REMITTITUR TO THE DISTRICT COURT. ON 6/11/21 SCHACHTER FILED A MOTION TO CORRECT/MODIFY AN ILLEGAL SENTENCE, THE STATE FILED A RESPONSE AND THE DISTRICT COURT ORDERED ORAL ARGUMENTS. ON 3/28/22 THE COURT HELD ORAL ARGUMENTS ON THE MOTION. ON 3/28/22, THE DISTRICT COURT ISSUED AN ORDER DENYING THE MOTION TO

<sup>FN#1</sup>  
COUNT #2, BURGLARY WAS DISMISSED BY THE STATE ON THE FIRST DAY OF TRIAL.



MODIFY AND/OR CORRECT AN ILLEGAL SENTENCE. A  
TIMELY NOTICE OF APPEAL WAS FILED; AND  
THIS COURT'S ORDER DATED 4/19/22 GRANTS  
ITS AUTHORITY TO RULE ON THE APPEAL.

**Statement of District Court Error.** Explain why you believe the district court was wrong. Also state what action you want the Nevada Supreme Court to take. (Your answer must be provided in the space allowed).

THE RECORD IS CLEAR THAT THE DISTRICT COURT ISSUED  
ITS "CORRECTED" JUDGEMENT BEFORE THE PETITIONER WAS  
FILED. THE DISTRICT COURT ATTEMPTS TO EXPLAIN THE  
LACK OF JURISDICTION BY POINTING OUT A FOOTNOTE IN  
THE ORDER OF AFFIRMANCE. HOWEVER, THE FOOTNOTE  
MERELY ACKNOWLEDGES THE "CORRECTED" JUDGEMENT CONTAINS  
A SINGLE SENTENCE AND THAT [SINGULAR] ISSUE WITHIN  
THE "FOUR CORNERS" OF THE APPEAL IS MOOT. THE FOOTNOTE  
DOES NOT DECLARE ALL SENTENCING ISSUES NOT BEFORE  
THE COURT ARE MOOT. A COURT'S JURISDICTION MUST

BE OBTAINED PRIOR TO COURT'S ACTION. (SEE BOTHINGTON  
V. STATE, 110 NEV. 124 (1984)). THE FOOTNOTE MOOTS THE ISSUE,  
NOT THE AUTHORITY OF THE REMITTUR.

THE DISTRICT COURT THEN GOES ON TO STATE THE "CORRECTED  
JUDGMENT" ADDRESSES STRUCTURAL ERRORS IN THE  
SENTENCE AND NOT A NEW SENTENCE. AND THEREFORE,  
THE USE OF NUNC PRO TUNC IS PROPER. THIS IS UNTRUE,  
THE NEW SENTENCE COMPLETELY VACATES THE LEGAL 12  
TO 48 MONTH SENTENCE AND MOVES COUNT #3 TO COUNT #1.  
THE USE OF NUNC PRO TUNC IS FOR CLERICAL ERRORS  
AND IS PROHIBITED WHEN ITS USE WOULD INTERFERE  
WITH A SUBSTANTIAL RIGHT OF THE DEFENDANT. (SEE  
HACK V. HACK, 125 NEV. 93, FINLEY V. FINLEY, 65 NEV. 113 AND  
MCCINTOCK V. MCCINTOCK, 122 NEV. 842.) BECAUSE THESE  
STRUCTURAL CHANGES EFFECT THE DEFENDANT'S PAROLE  
CALCULATIONS, CREDIT-EARNING CALCULATIONS, HOUSING AND  
PROGRAM PLACEMENTS, THE DEFENDANT HAS THE RIGHT  
TO BE ABLE TO ADDRESS THE CHANGES IN A  
MEANINGFUL WAY. IN WALKER V. DEEPS, 50 F3D 670, THE  
FEDERAL COURT RULED NEVADA LAW CREATES A "LIBERTY  
INTEREST" IN SENTENCING PROTECTED BY THE DUE PROCESS  
CLAUSE, INCLUDING THE RIGHT TO BE PRESENT AT ALL  
CRITICAL STAGES. THIS COURT RULED IN STATE V.  
BARDNESS, 54 NEV. 84, THAT RULE 77(d) OF THE N.R.C.P.  
PREVENTS SENTENCING OF HABITUAL CRIMINALS IN  
CHAMBERS. AND RULE 59(e) OF THE SAME N.R.C.P.  
PREVENTS ALTERING/AMENDING SENTENCES BEYOND

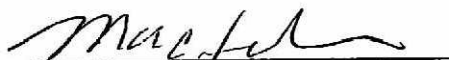


28 DAYS. THE DISTRICT COURT THEN MISQUOTES THIS COURT IN HOLLANDER, 82 NEV. 345 AND USBY, 82 NEV. 183. AT SUPRA 82 NEV. 353, "THIS SENTENCE IS A NULLITY." WHILE THE ILLEGAL SENTENCE DOES NOT EFFECT THE CONVICTION, IT DOES MAKE THE SENTENCE A NULLITY. WHICH IS THE FINAL ISSUE. DESPITE THE DISTRICT COURT ASSERTION, APPELLANT MAKES NO ARGUMENT ABOUT "RETROACTIVITY" OF THE NEWLY REVISED HABITUAL LAW (NRS 207.010 et. seq.) RATHER, APPELLANT ARGUES IN OPPOSITION OF THE COURT'S OPINION THAT THE ENTIRE ISSUE IS moot BECAUSE <sup>THE</sup> COURT COULD SIMPLY RE-ENTER ITS CORRECTED JUDGEMENT IMPOSING THE SAME SENTENCE. THIS COURT HAS DECLARED THAT HABITUALITY IS A "STATUS" BASED ON AN AVERMENT (SEE HOWARD V. STATE, 83 NEV. 53 AND PARKERSON V. STATE, 100 NEV. 222) THE VERY WORD "STATUS" IMPLIES "ABILITY TO CHANGE." IF THE AVERMENT IS NO LONGER TRUE, THEN APPELLANT IS NO LONGER A HABITUAL CRIMINAL. THE LEGISLATURE NO LONGER CONSIDERS A TWICE CONVICTED DEFENDANT A HABITUAL CRIMINAL (SEE NRS 207.010 WHICH REQUIRES 5<sup>TH</sup> PRIOR CONVICTIONS FOR AN ADJUDICATION OF THE SMALL HABITUAL). THE DISTRICT COURT'S RELIANCE ON PULLIN, 124 NEV. 564 (2008) IS INCORRECT. IN PULLIN, THE WEAPON ENHANCEMENT HAS A NEXUS OR CONNECTION TO THE PRIMARY FELONY AND THE WRONG-DOING ASSOCIATED WITH THAT ENHANCEMENT OCCURS AT THE TIME OF THE PRIMARY FELONY. WITH THE ADJUDICATION

OF HABITUALLY, THE WRONG-DOING OCCURS OVER THE 3  
DECADES PRIOR TO THE PRIMARY FELONY. SO WHICH LAW  
WOULD BE THE CORRECT DATE? (SEE WEEK V. SLANSKY, 637  
F.SUPP. 947 (D. N.Y. 1986)). FINALLY BECAUSE DEFENDANT HAS  
SERVED IN EXCESS OF THE STATUTORY MAXIMUM SENTENCE  
FOR THE ATTEMPTED ROBBERY, AN "EXPECTATION OF FINALITY"  
PREVENTS ENHANCING A SENTENCE WHICH HAS EXPIRED.  
THE DOUBLE JEOPARDY CLAUSE PREVENTS DOUBLE PUNISHMENT  
ONCE THE SENTENCE HAS EXPIRED. (SEE U.S. V. SILVERS,  
90 F.3d. 95 (1996)).

APPELLANT ASKS THIS COURT TO DECLARE THE APPEALANTS  
SENTENCE IS ILLEGAL AND ORDER THE DISTRICT  
COURT TO DISMISS COUNT #3 AND RE-SENTENCE  
DEFENDANT TO COUNT #1.

DATED this 10 day of MAY, 2022.

  
Signature of Appellant

MARC SCHACHTER  
Print Name of Appellant



### CERTIFICATE OF SERVICE

I certify that on the date indicated below, I served a copy of this completed informal brief form upon all parties to the appeal as follows:

☐ By personally serving it upon him/her; or

☒ By mailing it by first-class mail with sufficient postage prepaid to the following address(es) (list names and address(es) of parties served):

CLERK OF THE COURT  
75 COURT ST.  
RENO, NV 89501

WASHEE COUNTY DISTRICT ATTORNEY  
1 SOUTH SIERRA ST.  
RENO, NV 89501

DATED this 17 day of MAY, 2022

Marc Schaefer  
Signature of Appellant

MARC SCHAEFER # 91445  
Print Name of Appellant

P.O. BOX 208  
Address

INDIAN SPRINGS, NV 89070  
City/State/Zip

                      
Telephone